

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

United States of America,

ZOOM VIDEOCONFERENCE

vs.

DOCKET NO.

1:22-cr-00188-LMM-CMS

James Wan,

Defendant.

TRANSCRIPT OF PRETRIAL VIDEOCONFERENCE  
BEFORE THE HONORABLE CATHERINE M. SALINAS  
UNITED STATES MAGISTRATE COURT JUDGE  
THURSDAY, OCTOBER 27, 2022

APPEARANCES:

For the Plaintiff:

Bret Reed Hobson, Esq.  
Assistant United States Attorney

For the Defendant:

Joseph Michael Todd, Esq.  
Joseph M. Todd, P.C.

Judith M. Wolff, RPR, CRR  
Official Court Reporter  
1914 United States Courthouse  
75 Ted Turner Drive, S.W.  
Atlanta, Georgia 30303  
judith\_wolff@gand.uscourts.gov

1 (Court was called to order at 2:37 p.m.)

2 COURTROOM DEPUTY: This is 1:22-cr-188, defendant  
3 Wan. I can't remember the first name, I'm sorry.

4 THE COURT: Good afternoon. Counsel, do you want to  
5 state your appearances, while I pull up the document.

6 MR. HOBSON: Sure. Bret Hobson for the United  
7 States, Your Honor.

8 MR. TODD: Joseph Todd, representing Mr. Wan.

9 THE COURT: All right. Well, it looks like we have  
10 got three motions pending. There's a motion for disclosure of  
11 Brady material, a motion to reveal the identity of the  
12 confidential informant, and a motion for psychiatric exam.

13 At least with respect to the psychiatric exam, I know  
14 you have been, Mr. Todd, you have been communicating with  
15 Ms. Smith. I think your order is going to have to have a  
16 little bit more specificity in it. I think it's going to have  
17 to have the date, and time and the doctor.

18 Am I right, Angela, from what you have been  
19 researching?

20 COURTROOM DEPUTY: Yes. And, Mr. Todd, I just sent  
21 you a copy of an order that we used in another case.

22 MR. TODD: Okay.

23 COURTROOM DEPUTY: It does not have the date and  
24 time, but I suggest that you do add that, is what the marshals  
25 have told us.

1 MR. TODD: Okay.

2 THE COURT: And there are those other two motions.  
3 It looks like the Brady motion is encompassed by our standing  
4 order.

5 MR. HOBSON: I think you already decided to deny that  
6 as moot last time.

7 THE COURT: Oh. Okay.

8 COURTROOM DEPUTY: What you said, Judge, is he could  
9 perfect it. And, actually, the new motion is the perfected  
10 part of what that was.

11 THE COURT: Okay. And that's the one where they want  
12 Brady and they also want the confidential informant?

13 COURTROOM DEPUTY: Yes, Judge.

14 THE COURT: Okay.

15 What do you say about that, Mr. Hobson?

16 MR. HOBSON: Well, first, I'll give you a real quick  
17 background on what the informant is and why we don't want to  
18 disclose more details about it, and then explain why, under  
19 the law, we don't have to.

20 But, basically, there's a news organization that just  
21 passively has information from this website, so we're not  
22 talking about like a government agent was the involved in this  
23 website or was involved in the chat or anything. They just  
24 passively see when someone posts a thing requesting a hitman,  
25 and they, if it sounds like a credible threat to them, they

1 just tell the FBI.

2 That's what we are talking about, but we don't want  
3 to compromise and let everybody know that we knew that, in  
4 general, because they would like to keep finding people that  
5 are going on this hitman website.

6 And then, when you apply that to the facts to the law  
7 and all the factors that are cited in Mr. Todd's motion, there  
8 is no consideration paid, there is no immunity given to this  
9 news organization, there are no threats made to them, there  
10 are no payments made.

11 There's no records of any of that happening because  
12 it didn't happen.

13 There's no potential significance to an offense. I  
14 don't think we'll even be using the information that came. We  
15 have his confession and he went on the website in front of the  
16 agent, there are recordings of it, Mr. Wan.

17 So it's not related to a defense, and there's no,  
18 like, entrapment or framing possibility here because they just  
19 weren't involved in it at all. It's just a passive tipster,  
20 as if someone, a witness saw a crime happen, basically, and  
21 called the FBI.

22 And given the fact that we would like to keep  
23 catching people that are doing this, potentially, and hearing  
24 about it, not disclosing that in some sort of public filing as  
25 there is a high government interest as well.

1           THE COURT: Do you want to respond to that, Mr. Todd?  
2 That's my understanding of the law also. Well, that's, the  
3 way Mr. Hobson has kind of described the law is how I  
4 understand it.

5           And given as much as he has disclosed, which I  
6 appreciate you disclosing that much to us, that seems like the  
7 motion should be denied. If you want to respond to that, you  
8 may.

9           MR. TODD: Judge, obviously, without knowing all the  
10 facts, that's the first kind of representation we have had  
11 that it's some kind of news information or somebody that, in  
12 that area.

13           What I am going to suggest to the Court is that at  
14 the very least I would need for the Court to do an in camera  
15 inspection. That way the government can provide you, Judge,  
16 with the information.

17           It doesn't have to be published, nobody has to know  
18 about it, but at least you need to know about it for the  
19 purposes of the case whether there is anything exculpatory in  
20 there.

21           Not knowing, I mean -- and I take counsel's word for  
22 it, but not knowing what it is, not knowing any of the details  
23 of it, it's hard for me to respond to determine what it is,  
24 what they know.

25           Like, in this particular case, was it just simply

1 they were on the dark web and this information came across and  
2 they just reported it to the government? Is that all there  
3 was to it? Or was there anything more to it than that?

4 So, obviously, I'm taking counsel's word for it, but  
5 that being said, Judge, in order to protect my client and in  
6 order to I guess get a ruling, I would say at the very least,  
7 Judge, not knowing what the tipster or the agency or whoever  
8 it is, what they are going to say, I would request that the  
9 Court, at the very minimum conduct an in camera inspection.

10 The government can provide you with that information,  
11 whatever it is, to make a determination whether, number one,  
12 there's anything exculpatory.

13 I need an umpire, that is you, Your Honor, the judge  
14 in this case, if I can't see it or he's not going to reveal it  
15 to me, at least he can reveal it to you and you can make a  
16 determination whether, number one, there's anything  
17 exculpatory in this case and whether they used that  
18 information other than just a general information board.

19 THE COURT: Okay. I hear what you're saying. I'm  
20 not going to do that. I think defendants would like me to  
21 review things in camera all the time, and I do my best to  
22 avoid that. Not because I'm shirking, but because that's not  
23 necessarily appropriate.

24 You have to make, you would have to make some sort of  
25 a showing, some sort of an explanation. I think just based on

1 the government's representation, I see nothing here that  
2 merits me performing an in camera review.

3 So I'm going to deny that motion for the reasons  
4 discussed here on this call.

5 MR. HOBSON: If I may, Your Honor, real quickly. I  
6 would -- if there was something exculpatory, no matter what  
7 the source, I would have a responsibility to disclose, and I  
8 absolutely would.

9 There is none, and if there is anything exculpatory,  
10 I still have that duty to turn that over.

11 THE COURT: Right. You do based on just Brady in  
12 general, but in addition to that our standing order requires  
13 it. And, in addition to that, we now under the Due Process  
14 Protection Act, we order you to do that every time at  
15 arraignment.

16 So to the extent you want me to say it one more time,  
17 Mr. Hobson, you better turn over anything exculpatory.

18 But, honestly, based on these facts, I can't imagine  
19 anything exculpatory about it. So if there was certain facts  
20 where you can see it, I would do it, but this seems like about  
21 as far from that as you could possibly get.

22 So I'm going to deny that motion.

23 MR. TODD: One last thing, Judge, and just for  
24 clarification purpose from counsel. Is he saying that all the  
25 news information did was basically pick up the words, the

1 information online, and report it to the FBI?

2 I just want clarification because the basic  
3 difference as to what kind of, what their conduct was and what  
4 their involvement was.

5 If it was just simply we see this word coming up on  
6 the internet, on the dark pool, and then they call the FBI and  
7 say here's the word that came up versus they did an  
8 independent investigation of it to make any determinations?

9 I think we need to know just a little bit more of  
10 what their involvement was, because that makes a determination  
11 whether or not -- so that that would either have to be  
12 disclosed or, if not disclosed, whether the Court would have  
13 to, I believe, do an in camera inspection.

14 THE COURT: I'll just say he's said he is not going  
15 to use the information from the informant.

16 MR. TODD: Okay.

17 THE COURT: His case is going to be built around  
18 other things, including your client's confession. And I think  
19 with the representation that there is nothing exculpatory in  
20 it, I'm not sure that Mr. Hobson needs to say anything else.

21 So I guess if there's anything else that you could  
22 put a finer point on it and you choose to, Mr. Hobson, I think  
23 he would appreciate it, but I'm not going to require that.

24 MR. HOBSON: I appreciate that. And I will just add  
25 that I don't want to reveal sources and sort of methods.



1 There is some stuff that we don't want to reveal and I'm  
2 trying to work around.

3 But what I will represent, they were not talking with  
4 Mr. Wan, they were not participating any way, shape or form.  
5 They receive the information passively, however they receive  
6 it, not with communicating people running the site or  
7 anything. They just are able to see the information on that  
8 site, and then they pass on that information that they see to  
9 the FBI, saying we saw this, we are concerned.

10 THE COURT: Okay. So as far as you know, the  
11 confidential informant didn't communicate with Mr. Wan in way?

12 MR. HOBSON: No. Absolutely not.

13 THE COURT: So it's not a case of a sting or whatever  
14 you might call it, a setup.

15 MR. HOBSON: No.

16 THE COURT: Okay.

17 All right. So that leaves us with the motion for  
18 psychiatric review. Do you have a doctor picked out and an  
19 appointment time?

20 MR. TODD: Judge, I have two doctors that are  
21 supposed to let me know something today or tomorrow on that.  
22 I have contacted them, I'm just waiting to see who is  
23 available that would have the time to do it.

24 So hopefully I have something within the next day or  
25 two, something definite, and then move on from there. I can

1 get from them a date, the time and whatever other information  
2 I need.

3 THE COURT: Okay. Great. And you can just  
4 coordinate with Ms. Smith, like you have been doing, and she  
5 will, she can help; if there's any issue with the marshals, I  
6 can help, Mr. Hobson can help.

7 But it seems like once you get the date and time and  
8 the doctor's name, they might say, Oh, we can never do it at  
9 that time because that's shift change or something. There is  
10 a possibility of that. But I think if you get the ball  
11 rolling, we should be able to get this done.

12 MR. TODD: Right. Yes.

13 THE COURT: Okay. Why don't we go ahead and,  
14 actually, why don't we, we will just set this for -- what do  
15 you all recommend we do, what our next steps are?

16 Mr. Hobson, do you think -- I don't think the case  
17 should be certified yet.

18 MR. HOBSON: No. We need to wait on the evaluation.  
19 So I guess leave that motion pending, and then we'll convene  
20 as soon as that's happened.

21 THE COURT: Angela, why don't we go ahead and just  
22 set something for a month from now. And that way nothing will  
23 fall through the cracks. And if nothing is happening, we can  
24 just reschedule. But let's go ahead and put something on the  
25 calendar.

1 COURTROOM DEPUTY: Okay. Let's see.

2 How about the 28th, which is a Monday, at like 11;  
3 does that work for everyone?

4 MR. HOBSON: Sure.

5 MR. TODD: Monday, November 28?

6 COURTROOM DEPUTY: Yes, sir.

7 THE COURT: That's the Monday after Thanksgiving.  
8 Yes.

9 MR. TODD: Hold on one second, Your Honor. I'm  
10 checking my, check and making sure.

11 COURTROOM DEPUTY: Actually, Mr. Todd, you have a  
12 leave through the 30th.

13 MR. TODD: Right.

14 COURTROOM DEPUTY: Let's look at, let me get back to  
15 our calendar. How about Friday, the 2nd, we could do at  
16 like 10:00 a.m.

17 THE COURT: That whole day doesn't work for me. I  
18 have to take my kid to the doctor, so I think that's going to  
19 be a work-from-home day. That's like something I have to do.

20 So what about --

21 COURTROOM DEPUTY: Monday the 5th, at 10:00?

22 MR. TODD: Is there any way, Judge, that we can do  
23 that in the afternoon, possibly? The only reason I say that,  
24 right now I have something scheduled that morning. I'm  
25 requesting Monday, the latest we can do it would be better,

1 just because I have a heavy trial schedule, Judge, and it  
2 looks like I'm in court just about every day.

3 But be that as it may, if we can do it in the  
4 afternoon, usually that works out a little better because if I  
5 don't get called to trial, I'm not there the whole day.

6 THE COURT: That's fine. I don't mind doing it  
7 later.

8 COURTROOM DEPUTY: Do you want to do it at 3:00?

9 MR. TODD: That would be great.

10 COURTROOM DEPUTY: And we'll just call it a status  
11 conference.

12 THE COURT: That's right. And if anybody has a  
13 conflict, we can reschedule that.

14 MR. TODD: Thank you, Judge. I appreciate your  
15 consideration.

16 THE COURT: Okay. Well, thanks you guys. It's good  
17 seeing everybody.

18 MR. HOBSON: You, too.

19 MR. TODD: Take care. Everybody have a happy  
20 Thanksgiving.

21 COURTROOM DEPUTY: Thank you.

22 THE COURT: You too. Okay.

23 COURTROOM DEPUTY: You too.

24 MR. TODD: Bye.

25 (Proceedings were adjourned at 2:50 p.m.)

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2 \* \* \*

3  
4 TRANSCRIBER'S CERTIFICATION

5  
6 I, Judith M. Wolff, a stenographic reporter and  
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8 do hereby certify:  
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10 That I transcribed the proceedings digitally-recorded  
11 on Thursday, October 27, 2022, in the matter of USA v James  
12 Wan, Case No. 1:22-cr-00188-LMM-CMS;  
13

14 That said audio recording of the proceedings were  
15 reduced to typewritten form by me;  
16

17 And that the foregoing transcript is a true and  
18 accurate record of the proceedings to the best of my skill and  
19 ability.  
20

21 Date: Monday, June 26, 2023  
22

23 s/ JUDITH M. WOLFF, CERTIFIED REALTIME REPORTER  
24 Signature of Transcriber  
25

<p><b>COURTROOM DEPUTY:</b> [14]  <b>MR. HOBSON:</b> [10] 2/6 3/5 3/16 7/5 8/24 9/12 9/15 10/18 11/4 12/18  <b>MR. TODD:</b> [16]  <b>THE COURT:</b> [23]</p> <p><b>1</b></p> <p>10:00 [2] 11/16 11/21  11 [1] 11/2  188 [1] 2/2  1914 [1] 1/22  1:22-cr-00188-LMM-CMS [2] 1/5 13/12  1:22-cr-188 [1] 2/2</p> <p><b>2</b></p> <p>2022 [2] 1/12 13/11  2023 [1] 13/21  26 [1] 13/21  27 [2] 1/12 13/11  28 [1] 11/5  28th [1] 11/2  2:37 [1] 2/1  2:50 [1] 12/25  2nd [1] 11/15</p> <p><b>3</b></p> <p>30303 [1] 1/23  30th [1] 11/12  3:00 [1] 12/8</p> <p><b>5</b></p> <p>5th [1] 11/21</p> <p><b>7</b></p> <p>75 [1] 1/23</p> <p><b>A</b></p> <p>a.m [1] 11/16  ability [1] 13/19  able [2] 9/7 10/11  about [13] 3/15 3/18 3/22 4/2 4/24 5/18 5/18 7/19 7/20 11/2 11/15 11/20 12/2  absolutely [2] 7/8 9/12  accurate [1] 13/18  across [1] 6/1  Act [1] 7/14  actually [3] 3/9 10/14 11/11  add [2] 2/24 8/24  addition [2] 7/12 7/13  adjourned [1] 12/25  after [1] 11/7  afternoon [3] 2/4 11/23 12/4  agency [1] 6/7  agent [2] 3/22 4/16  ahead [3] 10/13 10/21 10/24  all [9] 2/9 4/7 4/19 5/9 6/2 6/21 7/24 9/17 10/15  already [1] 3/5  also 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